The importance for the IP sector in Brexit negotiations and beyond

We are the heads of UK representative bodies in the intellectual property sector, including significant users of the IP system and those working in the field of protection of IP rights.

**Background**

The United Kingdom currently has a world-class IP system. As a result, the country has enjoyed huge benefits. It has had wide influence in shaping intellectual property law internationally, including in Europe, through the EU and otherwise.

The overwhelming view of users and professionals is that it is desirable to maintain as much as possible of the existing system. This provides significant advantages to British industry and commerce.

Intellectual property law and procedure is a technical area in which there are no real benefits in regulatory divergence. To the contrary, there are clear disadvantages. Moreover IP law does not stand alone but is linked with other areas such as competition law, product regulation and provisions on enforcement of judgments. Careful consideration must also be given to these areas, including the UK’s international obligations.

**Critical objectives**

We invite the Government to bear in mind three main points at this critical moment.

First, the United Kingdom should have as its overriding priority in this area the preservation of substantive and procedural rights. Loss of rights for UK undertakings which would result from a “No Deal” Brexit would be damaging in the short and longer term. The Government has received repeated submissions as to the importance of avoiding this risk. No-one wants to see this happen and, were the outcome of the Government’s negotiations with the EU to put these in jeopardy, it would imperil the United Kingdom’s position as a world leader in creative and technical industries which it currently enjoys. This is likely to have a wider and longer term impact on its highly productive innovative and service sector, and would negatively affect the Government’s industrial strategy.

Second, the United Kingdom and the EU have negotiated detailed provisions for the transitional continuation of substantive and procedural rights relating to intellectual property in the draft Withdrawal Agreement. These provide, as a whole, for reasonable continuity and certainty for the transitional period, including with respect to rights of representation. In contrast, the Government and EU’s “No Deal” preparations for the IP Sector are incomplete and create uncertainty. They do not assure that the EU institutions will guarantee continuation of relevant rights of UK undertakings, particularly with respect to procedural rights. The transitional provisions in relation to representation create asymmetries of protection to the detriment of UK undertakings.

Moreover, the body of existing EU legislation governing allocation of law and jurisdiction and dealing with the recognition and enforcement of judgments forms an important part of the IP system. The preservation of that body of law is important for the IP sector, as for many others.

It is vital in the interests of the United Kingdom and its IP sector that, as a minimum, the provisions in the Withdrawal Agreement relating to the interim continuation of substantive and procedural rights are made effective upon Brexit. Failure to secure this is likely to have a serious adverse impact on economic activities which the Government should be particularly concerned to protect.

Third, when negotiating future trading arrangements affecting intellectual property rights, the Government should respect the United Kingdom’s existing domestic and non-EU international laws and obligations, including the Patents Act 1977 which gives effect to the (non-EU) European Patent Convention. If any changes are contemplated, the Government should publish draft proposals with reasons and should consult fully before pursuing them.

**Continued engagement**

We will continue to engage with the Government on these issues and are grateful for its stakeholder dialogues. We shall, for example, make more detailed submissions concerning future trading arrangements, both with the EU and other countries, in due course.

The immediate priority must, however, be to achieve a deal which provides the certainty crucial to British business and commerce in the IP sector.

**14th October 2019**

**This letter is supported by the following signatories**

Suzanne Oliver, President, IP Federation

Simon Davis, President, The Law Society of England and Wales

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**Recipients**

*The Rt Hon Sajid Javid MP, Chancellor of the Exchequer*

*The Rt Hon Dominic Raab MP, Secretary of State for Foreign and Commonwealth Affairs*

*The Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster*

*The Rt Hon Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice*

*The Rt Hon Steve Barclay MP, Secretary of State for Exiting the European Union*

*The Rt Hon Andrea Leadsom MP, Secretary of State for Business, Energy and Industrial*

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*The Rt Hon Elizabeth Truss MP, Secretary of State for International Trade*

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